Hadley Batchelder
Arbitrator
2121 San Diego Avenue
San Diego, CA 92110-2986
(619) 297-9700, ext. 1501

FIRST TRANSIT, INC. (DASH) Employer, and TEAMSTERS LOCAL 572 Union Grievant: Elizabeth Hunter	Case No.: FMCS 011214-03559-A AWARD OF ARBITRATOR

Procedural Background to Arbitration

On October 18, 2001, an arbitration was held at Teamsters Offices, 450 East Carson Plaza Drive, Suite A, Carson, California 90746. The arbitration concerned the employment termination of Elizabeth Hunter (hereafter called "Grievant"), former employee of First Transit, Inc. (hereafter referred to as "Employer"). GAYLE L. GRAY, Attorney and Director of Labor Relations for First Transit, 5584 Snow Mountain Road, Broad Run, VA 20137-1939, represented employer, First Transit, Inc. LOURDES M. GARCIA, attorney with Wohlner Kaplon Phillips Young & Cutler, 15760 Ventura Boulevard, Suite 1510, Encino, CA 91436, represented Teamsters Local 72 (hereafter called "Union"). Grievant was present during the proceedings. The arbitration was held pursuant to Article XI, Section 2 of the collective bargaining agreement then effective.

……..

……..

……..

Issues

There was some dispute over the characterization of the issues in this case, but for reasons that appear later herein the arbitrator adopts a combination of the Employer's and Union's statements of the issues.

1. Did the Union fail to advance the Grievant's one-day suspension to Step Two of the grievance procedure, thereby forfeiting its right to arbitrate?
2. Did the Grievant, or the Union on her behalf, fail to file a Grievance upon her termination, thereby forfeiting the right to arbitrate Employer's decision to terminate Grievant?
3. Did Employer have just cause to terminate Grievant on June 6, 2000? If not, what is the appropriate remedy?

Summary of Facts as Found by Arbitrator

Employer hired Grievant as a bus driver on October 12, 1999. Prior to her work for Employer Grievant worked as a bus driver for Laidlaw Transit Services, Inc. for around 8 years. After initial training Grievant was assigned to, and drove a bus on, various bus routes for Employer. There were several instances of strange behavior of Grievant noted by Employer observers and bus customers shortly before May 2000. Another driver made an unsolicited report, on May 15, 2000, of bizarre behavior on earlier occasions including Grievant's talking to herself while walking, laughing for no apparent reason and a report that by a customer that Grievant locked customers in a bus while she went to the bathroom. On May 16, 2000, Grievant was given a one-day suspension (discipline) for listening to a portable radio while operating the bus. Although Grievant denied this activity, there was a credible witness who both observed her and reported the incident and the arbitrator accepts that Grievant did what was alleged. For her infraction (and because of other complaints received by Employer about her conduct while driving mentioned above) she was also ordered to be re-trained (with newly hired recruits) and evaluated

during her re-training. This retraining actually resulted in a much longer actual suspension from driving a bus on a route, apparently from May 16 to June 4, 2002, however the arbitrator believes that only one day of the suspension was without pay.

There is considerable dispute regarding the length, intensity and value of the re-training period and some discrepancy between what evaluators said about what they observed during her re-training. One report said that Grievant made various driving errors during her turn at the wheel. Some errors noted included having her hands inside steering wheel, rolling stops, leaving doors open while underway, unsafe speed into bus stops and leaving the bus in drive gear (apparently at stops the bus is to be put into "neutral"). Another trainer noted that Grievant drove so carelessly that the trainer took over the wheel. Even though the final observer rated Grievant Fair to Good on most items, her written comments seemed to suggest that the observer was being quite generous in those marks. Negative comments on Grievant's reaction time, erratic speed, unsafe curb procedures, failure to maintain distance between her bus and vehicles to her front cast suspicion on Grievant's skills. Considering the length of time Grievant had been driving buses, her driving was quite poor. This same observer said that Grievant was not very alert and made what seemed to the observer to be inappropriate remarks and behaviors during the drive.

These observations are at odds with Grievant's own testimony and counsel for Grievant introduced evidence that seriously questioned the seriousness of Employer in its retraining and the amount of training (both in class and behind the wheel) that Grievant actually received. It seemed to the arbitrator that there was some suggestion that the Employer's use of the re-training was a pretext and a sham. Counsel pointed to the fact that there was considerable improvement in Grievant's driving at the end of the re-training period (although it was suggestion that Grievant received little actual training or serious evaluation). The arbitrator also notes, however, that many months after her termination there was a certain "dreaminess" and "sleepiness" to the way in which Grievant testified and in her demeanor during the hearing. It was as if she was unable

to focus her attention on the matter at hand due to some external influence, about which the arbitrator does not care to speculate.

Even though her re-training was underway, on May 18, 2000, Grievant filed a grievance contesting Grievant's suspension. After filing the grievance, Grievant's representative met at least once with a representative of Employer (the Operations Manager).

Apparently Grievant was placed back in service on June 5, 2000, but was terminated upon returning to the bus yard in a meeting with the Safety and Operations Managers apparently by direction of the General Manager. Grievant's Union representative testified (albeit with some considerable coaching) that he contacted the Operations Manager requesting a meeting regarding Grievant's suspension and, now, termination. The Operations Manager set up a meeting for June 14. It was intended that the Safety Manager be present at the meeting but he was unable to meet on June 14 and the meeting was put over to June 16. On that date and with Grievant and her representative present, the re-training was discussed at length and Grievant, through her representative, challenged that retraining and pointed to inconsistencies and the positive things in Grievant's re-training.

On July 18, 2002, the Employer reaffirmed its decision to terminate Grievant in a letter which stated: "Elizabeth Hunter was terminated due to the fact that it was determined by the Safety Department that she did not pass her re-training. This is a safety issue and the termination is justified." From the Union's perspective the meeting on June 16 and the letter of July 18, was the second step in the grievance process.

The Union notified legal counsel and asked that an arbitration of this matter be begun. On August 4, 2000, Union counsel sent the Director of Labor Relations a letter requesting (demanding?) arbitration and asking that the Director contact him to select an arbitrator. Union counsel obtained a list of arbitrators from the Federal Mediation and Conciliation Service and, eventually, the undersigned was selected to hear this matter.

Analysis

Although this arbitration was brought pursuant to Article XI, Section 2 of the labor agreement between these parties, the Employer properly questioned the authority of the arbitrator to proceed with the just cause issue. The Employer insists that if either of the first two issues posed resulted in an affirmative answer, the matter would be closed and the arbitrator would never reach the termination issues. The Employer contends that by failing to file a separate grievance concerning Grievant's termination, and by failing to take the suspension grievance to "step two," the Union is or ought to be precluded from reaching the substantive issues involved in Grievant's termination.

At the outset the arbitrator concludes that the primary purpose of the notice requirements and process contained in the labor agreement is to make sure that both parties, but primarily Employer, have appropriate notice of the issues involved. The reason for notice is, of course, to avoid surprise, but probably also to promote the settlement of cases by negotiation rather than by arbitral process. There did not seem to be much doubt that Employer was aware of the issues surrounding Grievant's suspension and termination. The grievance filed the day after Grievant's suspension, the nine or so days of retraining, the termination letter and the meeting of June 16 (originally scheduled for June 14) and the eventual notice to the labor relations manager kept the issues in the minds of all concerned. In addition, testimony revealed that the General Manager was involved in the process and ultimately made the final decision to terminate Grievant. The second reason for the process contained in Article XI, Section 1, is to provide an orderly way for grievances to be handled and not to provide impediments to employees who have grievances. From an employer's perspective it may appear appropriate to leave employees with a remedy against their unions for failing to protect the rights of the employees. However, this arbitrator believes that the best solution is to determine whether Employer was prejudiced in any material way (such as a delay causing a loss of evidence). In this case the arbitrator perceives to preju-

dice to Employer by proceeding. It is also generally preferable to reach the merits of a case rather than decide the matter on procedural grounds especially when the adjudicative body is virtually the final remedy available to the disputants. Finally, the arbitrator is persuaded that the conversations Grievant's Union representative had with the Operations Manager did link the suspension grievance with that of Grievant's termination and that the request for arbitration to the Labor Relations Manager is adequate compliance with the "second step" in the process. While the arbitrator therefore finds that the answer to the first two issues posed above is "no," the Union is cautioned to advance the cause of its constituents with greater attention to the details of procedure contemplated by the labor agreement.

The arbitrator is concerned that there is some evidence that Employer might use re-training as a method of buying time while it builds a case for "just cause." And the arbitrator is concerned about evidence that Grievant's re-training was neither thorough nor sufficient nor meaningful. And the arbitrator believes that certain facts about the inattention of Grievant while driving came to light only after the retraining had ended. However, the sum total of the available evidence suggests that Employer had just cause to terminate Grievant. The arbitrator does not need to reiterate that evidence here, but the errors and oversights observed by evaluators seem to the trier of fact to be too many and too obvious to be expected of a bus driver with the experience claimed by Grievant. The evaluator who observed Grievant last in the re-training process strongly suggested that Grievant was suffering from mental problems that interfered with her driving responsibilities. This observation clearly has safety implications that Employer was entitled to act upon. Therefore, Employer was
justified in terminating Grievant even if the re-training was less than adequate.

Award

The grievance is denied in its entirety.

Respectfully submitted this 19th day of February 2002.

Hadley Batchelder
Arbitrator